Supreme Court, U.S.
FILED

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No. 95-

In The

Supreme Court of the United States

OCTOBER TERM, 1995

MILTON INGRAM,

Petitioner,

v.

HILLSBOROUGH COUNTY, FLORIDA; CAL HENDERSON, in his official capacity as Sheriff of Hillsborough County, Florida; and ARA HEALTH SERVICES, INC. d/b/a CORRECTIONAL MEDICAL SYSTEMS, INC., a Missouri Corporation, doing business in Florida,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

1. In evaluating claims by pretrial detainees of constitutionally inadequate medical care, does the Eighth Amendment deliberate indifference standard apply, or a more protective standard based either on the Due Process Clause or the Fourth Amendment?

2. Given that the Eighth Amendment protects convicted prisoners from only that degree of punishment that can be characterized as cruel and unusual, should the Eighth Amendment deliberate indifference standard apply without modification to medical care claims by accused citizens detained pending trial, who are entitled to a presumption of innocence and who, unlike convicted prisoners, may not by punished?

3. In regard to a pretrial detainee alleging inadequate medical care in a county jail, is a claim of municipal liability limited to the sheriff administering the jail, or is the county properly named as well?

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RULES OF THE SUPREME COURT OF THE UNITED STATES

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Petitioner Milton Ingram respectfully petitions for a writ of certiorari to review the judgment and opinion of the Eleventh Circuit in this case.

OPINIONS AND ORDERS BELOW

The unreported opinion of the United States Court of Appeals for the Eleventh Circuit in *Ingram v. Hillsborough County, et al.*, Case No. 93-3484, is reproduced in Appendix A, *infra*. The district court's oral ruling on Respondent Hillsborough County's motion for judgment as a matter of law is reproduced in Appendix B, *infra*.

JURISDICTION

The jurisdiction of this Court to review the judgment of the United States Court of Appeals for the Eleventh Circuit by writ of certiorari is invoked under 28 U.S.C. Section 1254(1). On May 17, 1995, the Court of Appeals affirmed the judgment of the district court. This petition is thus timely filed within ninety days of that date as required by 28 U.S.C. Section 2101(c); Sup.Ct.R. 12, 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment provides, in pertinent part, that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *U.S. Const.*, Amendment XIV, Section 1.

The Fourth Amendment provides, also in pertinent part, that, "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." *U.S. Const.*, Amendment IV. The Eighth Amendment provides, in its entirety, that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *U.S. Const.*, Amendment VIII.

Finally, according to 42 U.S.C. Section 1983,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress...."

42 U.S.C. Section 1983.

STATEMENT OF THE CASE

A. How the Federal Question was Presented

The jurisdiction of the district court was invoked under 28 U.S.C. Sections 1331 and 1343.

B. Statement of Facts

Arrested on September 15, 1990 for the commission of the misdemeanor offense of obtaining food with the intent to defraud, Milton Ingram was detained in the psychiatric wing of the Hillsborough County Jail to await trial. Five days later, Mr. Ingram was battered by a fellow detainee, and as a result sustained a broken jaw and the eventual loss of five teeth.

Ingram also suffered injury to his right eye. The treating nurse-practitioner initially noted that the injury was limited to a laceration to Mr. Ingram's right eyelid. Mr. Ingram requested the nurse-practitioner to allow a physician to examine the eye, but the request was not honored. Meanwhile, the condition of the eye deteriorated. Six days after the battery, an outside oral surgeon treating Mr. Ingram's jaw and teeth ordered an evaluation by a physician, but the jail medical professionals did not arrange for a physician's intervention. Instead, the same nurse-practitioner diagnosed conjunctivitis,

although Mr. Ingram complained that he could not see. The medical professionals at the jail provided treatment appropriate for the diagnosis of conjunctivitis, and members of the nursing staff regularly visited Mr. Ingram in the jail's psychiatric wing to provide him with his daily medications.

Eight days after the battery, Mr. Ingram's treating psychiatrist noted that Mr. Ingram was "perplexed" and complained of being unable to see out of his right eye. However, the psychiatrist made no referral to a physician to examine Mr. Ingram's eye. The psychiatrist again examined his patient on the thirteenth day after the battery and, noting that Mr. Ingram had become especially angry and delusional, prescribed an injection of a long-acting antipsychotic drug. The psychiatrist, however, referred Mr. Ingram to a physician on neither that day nor on the psychiatrist's next examination of Mr. Ingram, the seventeenth day after the battery. Meanwhile, on the fifteenth day, Mr. Ingram filed an inmate request form directly with the Sheriff's Office, complaining that his repeated requests for an eye examination had gone unanswered.

Finally, on the twentieth day, the psychiatrist again noted that Mr. Ingram was unable to see out of his eye and consequently referred him to an outside eye clinic. After another day passed, Mr. Ingram was examined for the first time by the jail physician, who noted severe eye damage and consequently referred the patient to an outside ophthalmologist. Examining Mr. Ingram on the same day, and again four days later, the ophthalmologist noted deterioration, but decided that Mr. Ingram should wait a month before further treatment. Mr. Ingram was released from jail two days later, but was provided no information about a follow-up appointment with the ophthalmologist. Instead, noting further deterioration, Mr. Ingram requested treatment for his eye at a neighborhood free clinic, and was referred to another ophthalmologist. Confirming his diagnosis with yet another ophthalmologist, this physician concluded that as a result of traumatic injury, Mr. Ingram's eye could not be saved.

C. The Proceedings Below

Mr. Ingram filed his initial complaint on February 28, 1992, alleging that he was provided constitutionally inadequate medical care in violation of the Fourth and Fourteenth Amendments. In addition to the private corporation contracted to provide medical care to pretrial detainees at the Hillsborough County Jail, Mr. Ingram named both the County and the County Sheriff under the theory of municipal liability. At the close of plaintiff's case, however, the trial court granted the County's motion for judgment as a matter of law, holding that the Sheriff was the only appropriate municipal defendant.

Mr. Ingram proposed the following jury instruction:

> "The protections afforded pre-trial detainees by the due process clause exceed those provided by the Eighth Amendment. Pre-trial detainees are entitled to reasonable medical care in the absence of a legitimate governmental objection, while prison inmates only have the right to be free from deliberately indifferent medical treatment."[1]

The trial court, however, rejected the request, instead instructing the jury that it was to apply a deliberate indifference standard in assessing Mr. Ingram's claim of inadequate medical care.[2] Over objection, the trial court submitted special interrogatories to the jury. The jury answered "no" to the first interrogatory, namely, "Did the defendants act deliberately indifferent to [the] serious medical needs [of] the plaintiff?" The trial court accordingly entered judgment on behalf of all defendants.

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[1] Parker v. Williams, 862 F.2d 1471, 1476 n.5 (11th Cir. 1989)

[2] The primary source of the court's deliberate indifference instruction was Howell v. Evans, 922 F.2d 712 (11th Cir. 1991), later case, Howell v. Burden, 12 F.3d 190 (11th Cir. 1994).

On appeal to the Eleventh Circuit Court of Appeals, Mr. Ingram raised three issues. He suggested that the trial court erred by: failing to apply the correct standard applicable to a pretrial detainee's claim of constitutionally inadequate medical care; failing to instruct properly on the deliberate indifference standard; and granting the County's motion for judgment as a matter of law. After hearing oral argument, the Eleventh Circuit affirmed without opinion on the authority of Eleventh Circuit Rule 36-1, which so provides when an opinion would have no precedential value, and any of the following circumstances (applicable to a jury trial) exist: there is sufficient evidence supporting a jury verdict; a directed verdict is supported by the record; or judgment has been entered without a reversible error of law.

REASONS FOR GRANTING THE WRIT

Certiorari is warranted under Sup.Ct.R. 10.1(a) because a division exists among the United States courts of appeals on the issue of whether claims of inadequate medical care by pretrial detainees are governed not by an Eighth Amendment deliberate indifference standard but by a more protective standard originating in either the Fourth Amendment or in the Due Process Clause of the Fourteenth Amendment.

Moreover, on two separate occasions this Court has explicitly deferred to another day the question of the appropriate standard. Thus, *certiorari* is also warranted under Sup.Ct.R. 10.1(c). In *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239 (1983), the Court expressly refused to decide whether pretrial detainees are afforded greater protection under the Fourteenth Amendment than convicted prisoners are extended by the Eighth Amendment. *Id.* at 243 (acknowledging only that the rights of a pretrial detainee to medical care are "at least as great" as the rights afforded to a convicted prisoner by the Eighth Amendment.) This Court once again expressly reserved decision on this issue in *City of Canton v. Harris*, 489 U.S. 378 (1989), observing that,

> [T]his Court has never determined what degree of culpability must be shown before the particular constitutional deprivation asserted in this case - a denial of

> the due process right to medical care while in detention - is established. Indeed, in [*Revere*], we reserved decision on the question whether something less than the Eighth Amendment's deliberate indifference test may be applicable in claims by detainees asserting violations of their due process right to medical care while in custody.

Id. at 388, n. 8.

THE COURT SHOULD GRANT *CERTIORARI* BECAUSE THE CIRCUITS ARE DIVIDED ON THE CONSTITUTIONAL STANDARD APPLICABLE TO AN IMPORTANT AREA OF CONSTITUTIONAL ADJUDICATION AND BECAUSE THE COURT HAS TWICE EXPRESSLY DEFERRED RESOLVING THE ISSUE.

Certiorari is warranted in this case by virtue of a division among the United States courts of appeals on the issue of the appropriate constitutional standard applicable to claims by pretrial detainees of inadequate medical care. On two separate occasions, moreover, the Court has explicitly deferred resolving the precise issue raised by petitioner. This matter provides an ideal opportunity, then, to resolve the question left open by the Court in both *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239 (1983), and again in *City of Canton v. Harris*, 489 U.S. 378 (1989).

In addition, *certiorari* is warranted on the grounds that the Court, in *Albright v. Oliver*, __ U.S. __, 114 S.Ct. 807 (1994), recently modified, albeit in a different context, the constitutional standard defining governmental obligations toward accused citizens in the post-arrest, yet pre-conviction, stage of their criminal proceedings.

The Eleventh Circuit Court of Appeals has held that the same deliberate indifference standard applicable to assessing claims by convicted prisoners applies as well to Fourteenth Amendment claims of

inadequate medical care made by pretrial detainees. *See Hamm v. Dekalb County*, 774 F.2d 1567, 1574 (11th Cir. 1985); *Belcher v. City of Foley*, 30 F.3d 1390, 1396 (11th Cir. 1994).

Most of the remaining circuits addressing the issue agree with the Eleventh Circuit. The Third Circuit, *Kost v. Kozakiewicz*, 1 F.3d 176, 188 (3rd Cir. 1993), the Sixth Circuit, *Heflin v. Stewart County*, 958 F.2d 709, 714 (6th Cir.), *cert. denied*, __ U.S. __, 113 S.Ct. 598 (1992), and the Seventh Circuit, *Salazar v. City of Chicago*, 940 F.2d 233, 240 (7th Cir. 1991), all conflate the Eighth and Fourteenth Amendment standards, as does the Eighth Circuit. *See Ervin v. Busby*, 992 F.2d 147, 150 (8th Cir.), *cert. denied*, _ U.S. _, 114 S.Ct. 220, 126 L.Ed.2d 176 (1993); *but see Boswell v. Sherburne County*, 849 F.2d 1117, 1121 (8th Cir. 1988)(recognizing split among circuits on the issue).

In contrast, the Fifth Circuit Court of Appeals has consistently adopted a more protective constitutional standard for pretrial detainees, as opposed to convicted prisoners. In *Jones v. Diamond*, 636 F.2d 1364 (5th Cir.)(*en banc*), *cert. dismissed*, 453 U.S. 950 (1981), for instance, the court held that, "[P]retrial detainees are entitled to reasonable medical care unless the failure to supply it is reasonably related to a legitimate governmental objection." *Id.* at 1378. *See also Pfannstiel v. City of Marion*, 918 F.2d 1178, 1186 (5th Cir. 1990)(same; *quoting Jones* standard). The Fifth Circuit most recently adopted this standard in *Hare v. City of Corinth*, 36 F.3d 412, 415 (5th Cir. 1994), *reh. en banc granted*, 36 F.3d 417 (5th Cir. 1994). (The *en banc Hare* court has yet to issue an opinion.)

Moreover, the Court has in analogous circumstances extended its Fourth Amendment analysis to evaluate the constitutional claims of an accused citizen at a stage beyond the initial seizure. In *Albright v. Oliver*, _ U.S. _, 114 S.Ct. 807 (1994), a plurality of the Court rejected an arrestee's argument that substantive due process governs the claim that he was prosecuted (not arrested) without probable cause. 114 S.Ct. at 810. Once aware of his outstanding arrest warrant, which was issued upon the filing of a criminal information, the arrestee in *Albright* voluntarily surrendered but was released after posting bond. *Id.* Although the state court found probable cause at a preliminary hearing, the criminal charges were later dismissed before trial on the

basis that the charges failed to state an offense under state law. *Id.* The arrestee then brought suit, claiming that his continuing prosecution without probable cause violated substantive due process. *Id.*

The *Albright* plurality held simply that the Fourth Amendment, not Fourteenth Amendment substantive due process, governed the claim. *Id.* at 811. "The Framers," according to the plurality, "considered the matter of pretrial deprivations of liberty, and drafted the Fourth Amendment to address it." *Id.*

Two concurring opinions, one by a member of the plurality, are also pertinent. Justice Ginsburg's opinion, for instance, invoked the common law rule that an arrestee's seizure is considered to continue even after pretrial release from custody. *Id.* at 815 (Ginsburg, J., concurring). Whether released on bond or detained awaiting trial, an arrestee is equally bound to answer the State's charges at trial and is therefore "seized" in either case. *Id.* at 817. Concurring separately, Justice Souter reasoned that,

> The importance of recognizing the latter limitation [on the reach of substantive due process] is underscored by pragmatic concerns about subjecting government actions to two (potentially inconsistent) standards for the same conduct and needlessly imposing on trial courts the unenviable burden of reconciling well-established jurisprudence under the Fourth and Eighth Amendments with the ill-defined contours of some novel due process right.

Id. at 820 (Souter, J., concurring in the judgment).

In summary, five members of the *Albright* court endorse the conclusion that the Fourth Amendment provides the governing constitutional standard for assessing the pretrial claims of accused citizens. *Albright*, of course, assessed the probable cause, as opposed to reasonableness of seizure, component of the Fourth Amendment. Yet, in so

doing the Court unequivocally rejected the contention that either the Eighth or Fourteenth Amendments govern a constitutional analysis of the post-arrest, yet pre-conviction, stage of criminal proceedings.

CONCLUSION

For the reasons stated above, petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari prayed for within.

Respectfully Submitted,

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APPENDIX A - ELEVENTH CIRCUIT ORDER OF AFFIRMANCE (UNREPORTED)

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-3484

D.C. Docket No. 92-265-CIV-T-99

MILTON INGRAM,

Filed: May 17, 1995.

Plaintiff-Appellant,

versus

HILLSBOROUGH COUNTY, FLORIDA; CAL HENDERSON, in his official capacity as Sheriff of Hillsborough County, Florida; CORRECTIONAL MEDICAL SYSTEMS, INC., a Delware Corporation, doing business in Florida,

Defendants-Appellees.

On Appeal from the United States District Court for the Middle District of Florida

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(May 17, 1995)

Before CARNES and BARKETT, Circuit Judges, and GIBSON*, Senior Circuit Judge.

PER CURIAM:

AFFRIMED. See 11th Cir. R. 36-1

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*Honorable Floyd R. Gibson, Senior U.S. Circuit Judge for the Eighth Circuit, sitting by designation.

APPENDIX B - DISTRICT COURT ORDER GRANTING MOTION FOR JUDGMENT AS MATTER OF LAW

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MILTON INGRAM,

Plaintiff,

CASE NO:
92-265-CIV-T-99(C)

vs.

HILLSBOROUGH COUNTY, FLORIDA; CAL HENDERSON, in his official capacity as Sheriff of Hillsborough County, Florida; and ARA HEALTH SERVICES, INC. d/b/a CORRECTIONAL MEDICAL SYSTEMS, INC., a Missouri Corporation, doing business in Florida,

Defendants.

TRIAL PROCEEDINGS
BEFORE THE HONORABLE H. DALE COOK
UNITED STATES DISTRICT JUDGE, and a jury.
(Spetember 16, 1993)

* * * * * *

MS. BECK: Yes, Your Honor. The County also is prepared to make a motion for directed verdict. This is an official capacity suit against the Sheriff, therefore, under Kentucky vs. Graham and Brandon vs. Holt —

THE COURT: Your motion is to dismiss the County as a separate entity —

MS. BECK: Correct.

THE COURT: — on the grounds that no evidence has been introduced to support the County as a separate entity —

MS. BECK: Correct.

THE COURT: — as being a final policymaker in behalf of the Sheriff?

MS. BECK: Right. And that the suit against the Sheriff is to be treated as against the County.

THE COURT: Anything you want to say about it?

MR. FARMER: I think we discussed that in an instruction perhaps that would tell the jury that a verdict against the Sheriff would be a verdict against the County.

THE COURT: Do you have anything you want to say about Ms. Beck's motion?

MR. FARMER: No, Your Honor.

THE COURT: Sustained.

* * * * *